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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/815,590	03/23/2001	Michael James Burk	41556/04720 (RS11P066)	5562

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FOLEY AND LARDNER
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EXAMINER

ZEENDER, FLORIAN M

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 06/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/815,590

Applicant(s)

BURK ET AL.

Examiner

F. Ryan Zeender

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 04212004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shavit et al. '156 in view of Duffy et al. and further in view of Official Notice.

Shavit et al. disclose or inherently teach all the limitations of the claims including a supply chain management framework comprising a plurality of independent stores/distributors (See Col. 1, lines 63-68) as well as a supply chain manager (i.e., agent); data related to product being received over a network; generating and sending electronic order forms by stores; receiving invoices (See for example Col. 28, lines 40-48) and generating an alert when matters need attention (See Col. 7, lines 47-57).

Shavit et al. lack the specific teaching of the agent/manager negotiating landed cost; the computer collecting sales data for a plurality of stores; a computer calculating a price using the order form or the invoice; the computer comparing the price to the landed cost and determining price discrepancy.

Duffy et al. teach a similar supply chain management framework whereby sales data is collected (See paragraph 0056).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Shavit et al. to have the communicated data include sales data, in view of Duffy et al., in order to "save significant time and cost for buyers attempting to obtain items and suppliers attempting to provide items" (See Duffy, paragraph 0028).

The Examiner takes Official Notice that it was well known in the art of commerce to have an agent/manager negotiate landed cost, a computer calculate a price using an

order form or invoice and a computer comparing the price to the landed cost and determining price discrepancy.

Re claims 3, 9, and 15; a table of costs and goods (for example using an Excel spreadsheet) are well known in commerce in order to determine total cost.

Response to Arguments

Applicant's arguments filed April 21, 2004 have been fully considered but they are not persuasive. The applicant argues on page 7, last paragraph, and on page 9, third paragraph, that the manager can negotiate costs with distributors and suppliers "on behalf of a plurality of independent stores". However, the claims, when interpreted broadly, **do not** specifically state this limitation. Therefore, the argument is moot and applicant's traversal of the use of Official Notice is not proper.

Regardless, the Examiner directs applicant's attention to the previously cited reference, Haluska '519 (for example Col. 2, lines 45-49, and Col. 5, lines 40-45), that calculating costs and determining price discrepancies are well known in the art.

Further, the newly cited reference Hahn-Carlson et al. '463, teaches in the "BACKGROUND", in paragraphs 0004-0008, a "**typical** commercial interaction between a seller offering a product and a buyer". The reference teaches negotiation a price, establishing a contract, and determining price discrepancies.

Because the limitations for which the Examiner has taken Official Notice are well known in the art of commerce, the use of Official Notice and thus the entire rejection is proper.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Ryan Zeender whose telephone number is (703) 308-8351. The examiner can normally be reached on Monday-Friday, 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bob Olszewski can be reached on (703) 308-5183. The receptionist's phone number for the Technology center is (703) 308-1113.

The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9327 for after-final communications.

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F. Zeender

Primary Examiner, A.U. 3627

June 9, 2004



6/9/04